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May 21, 1993

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendments of Parts 32, 36, 61, 64,
)
and 69 of the Commission's Rules to
)
Establish and Implement Regulatory
)
Procedures for Video Dialtone Service)
_____)

RM-8221

COMMENTS OF PACIFIC BELL AND NEVADA BELL

Pacific Bell and Nevada Bell (hereafter "the Pacific Companies") submit their comments in response to the Commission's Public Notice, dated April 21, 1993, on the Joint Petition for Rulemaking and Request for Establishment of a Joint Board ("Petition") by Consumer Federation of America ("CFA") and the National Cable Television Association ("NCTA") (collectively known as "Petitioners").

Petitioners ask the Commission to commence a rulemaking to establish comprehensive specific rules for video dialtone services and to establish a Federal-State Joint Board to recommend procedures for separating the cost of local telephone company plant that is used jointly to provide telephone service and video dialtone. Petitioners specifically urge the Commission to address issues with respect to jurisdictional separations, cost accounting, access charges, price caps, and joint marketing

and privacy.¹ Moreover, Petitioners urge the Commission to hold pending video dialtone applications in abeyance and to refrain from accepting any new video dialtone applications.²

The Commission should categorically reject any suggestion to delay its review and approval of pending video dialtone applications and to refuse new video dialtone applications. The Petitioners' request is a transparent attempt to prevent competitive video services. There is absolutely no reason why video dialtone proposals should not continue to be accepted, reviewed and approved, even if the Commission undertakes a rulemaking. Indeed, there are two compelling reasons why video dialtone proposals should not be delayed.

First, as the Commission previously concluded, postponing the prompt implementation of the video dialtone policy would deprive the public of the numerous benefits identified as possible from video dialtone.³ Such a delay would also interfere with the evolution and development of video dialtone offerings.

Second, there is no need for any delay. Because existing rules are appropriate for accounting, cost allocation and separation matters, it is unlikely that any of the proposed

¹ Petition, p. 4.

² Petition, p. 5.

³ Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, Second Report and Order, Recommendation to Congress and Second Further Notice of Rulemaking, 7 FCC Rcd 7581 (1992) ("Video Dialtone Order"), para. 117.

video dialtone transactions would raise legitimate concerns. If there were concerns, the Commission's Section 214 review provides the opportunity for the Commission to fashion safeguards. Similarly, video dialtone transactions can move forward prior to finalization of any rule changes because, if necessary, the Section 214 authorization can be structured to require the local exchange carrier to conform its video dialtone offering to any rule changes resulting from a rulemaking. For example, authorization can be conditioned on monitoring and specifically tracking costs to accommodate any adjustment to the rules. Similarly, true up and special reports could be conditions of authorization. The Commission should not allow the rulemaking process to be used to subvert efforts to accomplish its goals to improve the nation's telecommunication infrastructure, stimulate technology and service innovations and foster diversity of video services to the public.⁴

The Commission should also deny the Petition for rulemaking because Petitioners have failed to provide a sufficient basis for the Commission to institute a new proceeding. For the most part, the issues raised in the Petition and by Appendix A⁵ were previously considered by the

⁴ Video Dialtone Order, paras. 6, 9.

⁵ Appendix A. prepared by The Hatfield Associates. Inc..

Commission and addressed in the Video Dialtone Order. For example, the Commission specifically found that

- o Although its existing rules were not developed with video distribution in mind, no party demonstrated that the rules should be changed at that time for video dialtone services;⁶
- o Existing safeguards against discrimination and improper cross-subsidization are similar for common carrier services, whether voice, data or video;⁷
- o Existing safeguards against discrimination and cross subsidization, in addition to the nondiscriminatory first level video dialtone platform, should effectively protect against potential anticompetitive conduct;⁸
- o The price caps structure is satisfactory and consequently the Commission declined to add a separate price cap basket for video dialtone service;⁹
- o The existing safeguards with respect to nonregulated services offered as video dialtone services are sufficient at this time;¹⁰
- o There was no reason to amend the rules for enhanced services, network disclosure and Customer Proprietary Network Information (CPNI) in the context of video dialtone.¹¹

Thus, a rulemaking on these issues at this time would be redundant and a waste of Commission resources.

⁶ Video Dialtone Order, para. 90.

⁷ Id., para. 90.

⁸ Id., para. 89.

⁹ Id., para. 91.

¹⁰ Id., para. 92.

¹¹ Id., para. 93.

The Commission also found that it would be premature to change basic regulatory structures for specific video dialtone implementation when video dialtone services are evolving.¹² The Petition does not provide any reason to believe that fundamental changes have occurred since the Commission's analysis to require a different conclusion.

Moreover, while recognizing that the present safeguards are an appropriate starting point, the Commission also recognized that, as video dialtone services evolve, additional safeguards may be necessary.¹³ Existing safeguards are to be reassessed when a specific video dialtone offering is proposed.¹⁴ The Section 214 application process provides the opportunity for the Commission to make that assessment. The Commission also recognized, however, that at some time in the future¹⁵ a review of the rules and regulatory framework for video dialtone would be warranted to assess the continuing effectiveness of the rules in light of the actual development of video dialtone services.

Finally, the Commission was also cognizant of the need to avoid piecemeal changes to major regulatory structures, such as Part 36 and 69. The Commission correctly determined that any significant changes should take place in the context of a

¹² Video Dialtone Order, para. 116.

¹³ Id., para. 92.

¹⁴ Id., para. 89.

¹⁵ The Commission indicated that such review would be

comprehensive review of those rules rather than in a piecemeal basis (e.g., only with respect to video dialtone services).¹⁶

Given the Commission's recent analysis of the adequacy of its existing rules, and the lack of evidence to support any change in circumstances that would require that decision to be reconsidered, there is no need for a comprehensive rulemaking for video dialtone services at this time.

CONCLUSION

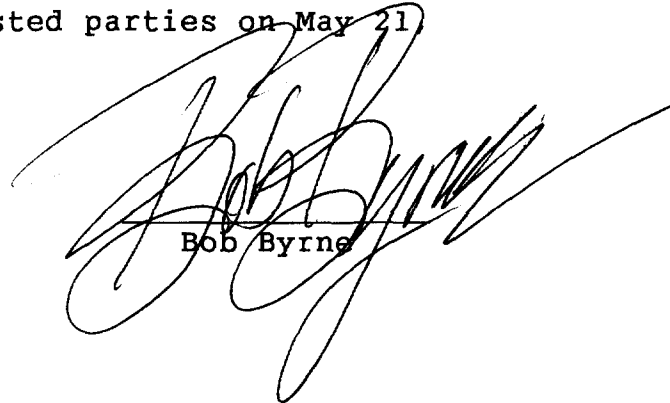
Limited Commission resources should not be squandered in further reconsideration of video dialtone accounting, cost allocation, jurisdictional separations, access charges and price caps, and other issues raised by Petitioners. As the Commission has already determined, existing rules are adequate and no changes are needed. If, however, the Commission does establish a rulemaking, Section 214 applications for video dialtone services should continue to be accepted and approved in a timely manner. A rulemaking should not be used to impede the progress in attaining the Commission's goals of improving the infrastructure,

¹⁶ Video Dialtone Order, para. 116.

stimulating technological and service innovations. and increasing

CERTIFICATE OF SERVICE

A copy of the foregoing comments from Pacific and Nevada Bell regarding the CFA & NCTA Joint Petition for Rulemaking and Request for Establishment of a Joint Board -- RM 8221 -- was mailed to the following listed parties on May 21, 1993:



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